

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4121 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JAGDISHCHANDRA MAGANLAL TRIVEDI

Versus

STATE BANK OF INDIA

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Appearance:

MR SUNIL K SHAH for Petitioner

MR PG DESAI for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/07/97

ORAL JUDGEMENT

1. The petitioner who was Middle Management Gr.II Officer of the respondent-bank, filed this Special Civil Application and challenges thereunder the order passed by the appellate authority of the respondent-Bank dated 7th May, 1983, annexure 'J' and the order dated 30th November, 1983, annexure 'L'.

2. After holding a departmental inquiry against the

petitioner on the misconduct which has been alleged against him, he was ordered to be compulsorily retired by way of the penalty under the order dated 2-8-1982, annexure 'I'. This penalty of compulsory retirement from services came to be reduced by the appellate authority under its order dated 7-5-1983. Then the petitioner filed review application which has also been dismissed. Hence, this Special Civil application.

3. The counsel for the petitioner has made submissions that, (i) it is a case of mere negligence in discharge of duties, which does not constitute any misconduct, and as such, the initiation of inquiry as well as the consequential orders passed by the appellate authority are without jurisdiction. In support of his contention, the counsel for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in the case of Union of India vs. J. Ahmed reported in AIR 1979 SC 1022, (ii) the copy of the investigation report of the C.B.I. was not given to the petitioner, and as such, whole of the inquiry vitiates, (iii) the preliminary inquiry report was also not given to the petitioner, (iv) certain basic and fundamental documents were denied to the petitioner at the time of inquiry. The petitioner submitted that the inquiry officer has directed the management to produce such documents i.e. the vault register, but the same was not produced in spite of repeated requests from the Inquiry Officer. The said vault register was not produced and the relevant entries were also not produced with the result that the important document in support of the petitioner was withheld and that has also vitiated the findings of the Inquiry Officer, (v) during the deposition of Shri H.J. Patel and Shri C.V. Hegde, it was pointed out that the Inquiry Officer has produced for the first time the letter dated 8th November, 1978, (Ex. 13). A copy of such letter though demanded by the petitioner was not given to the petitioner during the deposition of Shri H.J. Patel. Number of other documents were produced during the deposition of Shri H.J. Patel which were tendered for the first time in his evidence and copies of the same were not supplied to the petitioner. Thus prejudice has been caused to the petitioner by non-supply of these documents because the petitioner could not effectively cross-examine all the witness and more particularly, Shri H.J. Patel and Shri C.V. Hegde, and (vi) reference has also been made to annexure 'M', circular No.1/16 of 1981 and contention has been raised that the delay in reporting any of the deficiencies on the part of the concerned cashier was not serious to the case and could not have been taken to be a misconduct.

Lastly, it has been contended that full salary for the period of suspension has not been given.

4. On the other hand, the counsel for the respondent, Shri P.G. Desai, contended that this writ petition is wholly misconceived. There were very serious charges against the petitioner and all the charges were found to be proved, and as such, the penalty of compulsory retirement from services was legal, but in the appeal a lenient view has been taken and the penalty of reversion has been given. All the relevant documents were given to the petitioner and as such, the contention of non-supply of the documents is wholly untenable. It has next been contended that the C.B.I. report was not required to be given to the petitioner as it was not relied in the inquiry by the bank or not taken into consideration by the Inquiry Officer to hold the petitioner guilty of the alleged misconduct. The C.B.I. report only relates to the criminal liability of the petitioner and if the C.B.I. has not found it to be a case where the petitioner should be prosecuted, this document has no relevance whatsoever in the departmental inquiry. The bank could have proceeded against the petitioner on the misconduct alleged against him departmentally even if he was not found to be criminally liable on any of aforesaid act in the investigation conducted by the C.B.I.. The preliminary inquiry report is only relevant for the management to prima-facie satisfy whether the petitioner committed some misconduct and a regular inquiry has to be held. When the regular inquiry has been started those documents lost all of their relevance and importance, and as such, the demand of the petitioner for the preliminary inquiry report is not justified. Otherwise also, the petitioner has failed to show how these documents were relevant for the purpose of his defence and further failed to establish that any prejudice has been caused to him for non-supply of those documents. So far as the contention regarding the non-supply of the document Ex.13 is concerned, the counsel for the respondent submitted that this document was given to the petitioner much earlier to the recording of the statement of H.J. Patel. As to the other documents are concerned, too vague statement has been made. The petitioner has not given out the details of those documents as well as their relevancy. Replying to the contention of the counsel for the petitioner based on the document, annexure 'L' dated 24th August, 1981, the counsel for the respondent submitted that this document is in the different context, which has nothing to do with the petitioner's liability as Branch Manager to intimate such a serious matter to the Head Office. Lastly, the

counsel for the respondent contended that the petitioner has not been exonerated of the charges. The appellate authority only considered it to be a case where a lesser punishment should be given to the petitioner, but the petitioner was found to be guilty of the charges. In view of this fact, the petitioner is not entitled for the full salary and other allowances for the period of suspension.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

Re: Contentions No.1 and 6.

6. The chargesheet has been filed by the petitioner on the record of this Sp. C.A. at annexure 'D'. After going through the contents of the chargesheet, I do not find any substance in the contention of the counsel for the petitioner that it is only a case of negligence or a mere error in discharge of duties by the petitioner. Shri R.U. Patel, Cashier, was reported to have misappropriated the fund received from the Bank's depositors for credit to their accounts. While accepting the money he, besides signing the counter-foils, also recorded the transactions in the depositors' passbooks. The petitioner though having the notice of the misappropriation closed all those accounts in his own hand-writing. So the charge is that he has not only failed to report these incidents to the controlling authority but also sought to suppress the above facts. Though very specific charges have not been framed but from the aforesaid averments it comes out that the petitioner has supported such an illegal activity of his subordinate. Not only this, despite of having the knowledge of many of the serious misconducts of his subordinate Shri Patel he has further extended the benefits to him of granting 20 days' leave and leave fare concession. Instead of granting this leave to that person the petitioner should have reported the matter to the higher authorities and in consultation with the controlling authority, necessary action should have been taken. This is one charge I am referring otherwise all other charges are also equally very serious and cannot be said to be a case of mere negligence or error or omission in discharge of duties by the petitioner. The petitioner was a Branch Manager and Officer of the Bank in the MM Gr.II and it is really shocking that he has tolerated all these things and conveniently not reported immediately these things to the higher controlling authority.

7. Reference to the circular, annexure 'M' of the

Bank is also of no relevance. That circular has been issued in different context. This circular relates to the reporting of frauds and suspected frauds to the Reserve Bank of India. That is not the case here. On the other hand, this circular goes against the petitioner. When the Central Office has to report the matter of frauds and suspected frauds to the Reserve Bank of India then it is more obligatory on the part of the Branch Manager not to make any delay in such matters. So both these contentions made by the counsel for the petitioner are devoid of any substance.

Re: Contention No.2

8. In Para No.20(B), the petitioner submitted that had this report produced before the Inquiry Officer and had the copy thereof been supplied to the petitioner, the petitioner would have used the findings recorded therein in the inquiry and would have dissuaded the Inquiry Officer from reaching the conclusion adverse to the petitioner. The petitioner has come up with a case that the Central Bureau of Investigation has not found anything against him but what the petitioner has canvassed before this Court is that in the investigation made by the Central Bureau of Investigation he has been exonerated. The C.B.I. report has not been produced admittedly by the Bank in the inquiry against the petitioner. The C.B.I. report is not used as a document against the petitioner by the management in the inquiry. So it is the document on which no reliance has been placed to hold the petitioner guilty of misconduct alleged against him nor it is a document filed by the management against him. It is also not the case of the petitioner that the Inquiry Officer has relied on this document to hold him guilty of the charges. The petitioner has a right to demand the copy of the document which is to be used against him in the departmental inquiry as evidence. That document he can claim as of right or any other document if it is sought to be used against him he can plead for copy of the same. But as stated earlier, this document has not been used against the petitioner either by the Presenting Officer or by the Inquiry Officer, he has no right to claim copy of the same from the Presenting Officer or the Inquiry Officer, as the case may be. So the demand of the petitioner of this document or the prayer of the petitioner for production of this document in the inquiry is wholly untenable and unjustified. If the petitioner considers that this document was of some help to him in the defence then it is his duty to produce the said document after summoning it from the appropriate authority, but the

petitioner did not wanted to produce this document as evidence in defence. What he wanted that the Presenting Officer should produce this document in the inquiry or the Inquiry Officer may call for this in the inquiry. As stated earlier, this course which is sought to be adopted by the petitioner is not justified. Otherwise also, I do not find any substance in the contention of the counsel for the petitioner for production or the supply of the copy of the C.B.I. investigation report. This document is not relevant in the departmental inquiry. The criminal investigation by the C.B.I. relates to the criminal liability of the petitioner in the matter. Even if in the investigation of the C.B.I. the petitioner is not found to be criminally liable then too that report is not an evidence in the inquiry on the basis of which he may be exonerated of the charges. The scope of two inquiries viz. the criminal investigation of the C.B.I. for the criminal liability and the departmental inquiry regarding the misconduct of the petitioner is altogether different. At the most the conclusion is that either the C.B.I. has not found anything against the petitioner to be chargesheeted in the criminal court or the evidence to prove his guilt beyond reasonable doubt may not be available. The standard of proof in these two inquiries is different. In the criminal case, the standard of proof is of proving of guilt of the accused beyond reasonable doubt whereas in the departmental inquiry, the misconduct has to be proved on the basis of preponderance of the evidence. So this demand of the petitioner of the investigation report of C.B.I. is otherwise also not tenable. Moreover, merely, non-supply or nonproduction of the document in the inquiry will not vitiate the inquiry and ultimate order of punishment passed against the Charged Officer. In addition to this, the Charged Officer has to establish to the satisfaction of the Court that non-supply of the document will cause prejudice to his defence. In the present case, it is not the case of the petitioner that any prejudice has been caused to his defence for nonproduction of this document. What he has come up with the case that in case the investigation report of the C.B.I. would have been produced then he would have dissuaded the Inquiry Officer from reaching the conclusion adverse to the petitioner. The matter would have been different where this investigation report would have been conclusive and binding on the Inquiry Officer, but that is not the case here. In fact this investigation report has no relevance to this inquiry and non-supply of which may not be taken to be causing any prejudice to the petitioner's defence. Even if it is taken that the petitioner was not found criminally liable for the incidence in the investigation made by the C.B.I.

then too he will not be exonerated only on this ground in the departmental inquiry. This contention of the counsel for the petitioner is also devoid of any substance and the same cannot be accepted.

Re: Contention No.3.

9. It is not in dispute between the parties that Shri B.J. Mankodi, Chief Vigilance Officer of the Bank made a preliminary on-the-spot investigation and the copy of this investigation has been demanded by the petitioner. The grievance of the petitioner is that the copy of the preliminary on-the-spot investigation report made by Shri B.J. Mankodi was not supplied to him. What the petitioner contended that this was the main document on the basis of which the disciplinary proceedings were initiated against the petitioner and the same having remained on the file has influenced the disciplinary authority in reaching its decision. It has further been contended that the non-supply of the said copy of the report adversely affected the petitioner and consequently the inquiry and ultimate conclusion reached are vitiated. The petitioner in the special civil application has failed to make out any case how prejudice has been caused to him for non-supply of this document. What the petitioner has averred that non-supply of the copy has adversely affected the petitioner, but he has not specified how it has adversely affected him. At the most the substance of the averment is that this preliminary inquiry report remained in the inquiry file, and as such, it has influenced the disciplinary authority in reaching its decision. The Bank has come up with a case in the reply that the departmental inquiry proceeded against the petitioner independently and the petitioner was given all the documents on which reliance was placed and every opportunity was accorded to the petitioner to defend his case and the decision arrived at by the disciplinary authority as well as the appellate authority was only from the independent inquiry proceedings held against the petitioner. It is not the case of the petitioner that the Inquiry Officer has relied on this preliminary inquiry report against the petitioner in holding of the charges proved against him. It is also not the case of the petitioner that the Inquiry Officer has referred to this report in his inquiry report. Similarly, it is not the case of the petitioner that the disciplinary authority or the appellate authority has relied on this document in holding the petitioner guilty of the misconduct. So this document again was not relied by the Presenting Officer to prove the petitioner guilty of the charges, the Inquiry Officer has not relied upon the

document to hold the petitioner guilty of the charges nor the disciplinary authority or the appellate authority has relied on this document to hold the petitioner guilty of the charges.

10. The preliminary inquiry report has nothing to do with the inquiry conducted after the issue of chargesheet. The underlying ambit and scope of the preliminary inquiry would be to find out whether the disciplinary inquiry should be initiated against the delinquent Officer. When a final inquiry has started and full-fledged inquiry was held, the preliminary inquiry has lost its importance. Reference in this respect may have to the decision of the Hon'ble Supreme Court in the case of Narayan Dattatraya Ramteerthakhar vs. State of Maharashtra & Ors. reported in 1997 (1) SCC 299.

11. While dealing with the contention of the counsel for the petitioner regarding non-supply of the investigation report of the C.B.I., I have already observed that the delinquent Officer could only legitimately pray for supply of the document which forms the part of the chargesheet or inquiry and not all other documents. The preliminary inquiry report was not the relevant document in the inquiry for the reasons aforesaid and otherwise also in the present case, it was not relied upon against the petitioner in the inquiry. The Apex Court in the case of Secretary to Government & Ors. vs. A.C.J. Britto reported in 1997 (3) SCC 387 held that the non-supply of irrelevant document has not resulted in any manner to put the delinquent Officer, the petitioner herein, in defending himself.

12. In the case of S.K. Singh vs. Central Bank of India reported in 1996 (6) SCC 415 the Hon'ble Supreme Court held that the non-supply of the inquiry report is inconsequential if no prejudice is caused. That was the case before the Hon'ble Supreme Court of the final inquiry report and here is a case of preliminary inquiry report. The petitioner otherwise also has failed to establish how any prejudice is caused to him for non-supply of this document. What the petitioner contended is that as this report remained in the inquiry file it has influenced the mind of the disciplinary authority and the appellate authority which has adversely affected the petitioner. The counsel for the petitioner is unable to show that this preliminary inquiry report has been even referred to what to say to consider the same nor he has been able to point out how this report has influenced the decision of either of the authorities, i.e. the Inquiry Officer, the Disciplinary Authority and



the Appellate Authority. In view of the fact, as discussed above, the petitioner has failed to make out any justification in his demand of the copy of the preliminary inquiry report. Moreover, the petitioner has failed to show how he could have used this document even for his defence. He has failed to show any relevance of this document for himself. In fact, from reading of pleadings as contained in Para No.20(C) of the special civil application, it is a self-contradictory case. What ultimately the petitioner stated that the presence of this report would have influenced the disciplinary authority in reaching its decision. If that is the only ultimate effect of this preliminary inquiry report, how the petitioner justifies his claim for the copy of this report. If this copy would have been given then how that influence would not have been there, if the disciplinary authority would have been influenced by it. Lastly, if the petitioner considered this document to be material for his defence then he could have summoned this document in defence for which he has not made any request. This contention of the counsel for the petitioner has no merits.

Re: Contention No.4.

13. It is the contention that despite of the direction of the Inquiry Officer, the management has not produced the vault register. The petitioner had never wanted this document. The Inquiry Officer might have required this document, but the petitioner was not requiring this document for his defence or for any other purpose. The reason has been given by the respondent for nonproduction of this document which has not been controverted by the petitioner. The reason for nonproduction of this document has been given that the imputation in which the vault register figures was not established, and therefore, it was not necessary to produce the vault register. So that may be the reason for nonproduction and I do not find any illegality therein. Still if the petitioner considered that this document was relevant then he could have filed an application for production of the same, which he did not do. So the petitioner was not conceded it to be a document of any worth in defence. Moreover, again the petitioner has to establish relevance of this document and as to that any prejudice is caused to him for nonproduction of this document. What the petitioner stated that the most important document in support of the petitioner was withheld. How this document has any relevance in the inquiry and more so, in the defence has not been shown. Moreover, as stated earlier, if the

petitioner considered it to be a most important document in support of his defence, he could have exercised his right when available to him for production of the same, which he did not exercised. This contention of the counsel for the petitioner is not tenable.

Re: Contention No.5.

14. The first grievance has been made that during the course of deposition of Shri H.J. Patel and Shri C.V. Hegde, the Presenting Officer had produced for the first time the letter dated 8th November, 1978, Ex.13 and a copy of the same though demanded by the petitioner was not given to him during the depositions of those witnesses. The respondents have come up with a case in the reply that the copy of the document Ex.13 was made available to the petitioner during the course of inquiry and he was given adequate time to prepare the case for defence. Further full opportunity was given to the petitioner to cross-examine those two witnesses. The petitioner has not filed any rejoinder to the reply, and as such, these averments made by the respondent stand uncontroverted. The copy of the document Ex.13, was given to the petitioner, and as such, the grievance made on this ground is wholly unjustified.

15. Another grievance is that number of other documents were produced during the deposition of Shri H.J. Patel, which were tendered for the first time in his evidence and copies of the same were not supplied to the petitioner. It has further been contended that for non-supply of these documents, the petitioner could not effectively cross-examine all the witnesses and more particularly, Shri H.J. Patel and Shri C.V. Hegde. The pleadings of the petitioner on this grievance are very relevant and I consider it to be appropriate to reproduce the same, which read as under:

Number of other documents were produced during the deposition of Shri H.J. Patel which were tendered for the first time in his evidence and copies of which were not supplied to the petitioner. Thus great prejudice was caused to the petitioner by non-supply of the document because petitioner could not effectively cross-examine all the witnesses and more particularly Shri H.J. Patel and C.V. Hegde.

The pleadings are vague and indefinite. The petitioner has not disclosed what were the documents which were produced during the deposition of Shri H.J. Patel. In the absence of details of these documents, it is very

difficult to believe that whether any such document has been produced or not. Moreover, the petitioner has failed to produce any document on record to show that during the inquiry, at any stage, he made any complaint in this respect. Nothing has been produced on record to show that he has moved an application to the Inquiry Officer for giving him the alleged documents by giving necessary details thereof. This contention of the counsel for the petitioner deserves no acceptance.

16. No other point has been raised.

17. In the result, this special civil application fails and the same is dismissed. Rule discharged. No order as to costs.

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